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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, : Civil No.  
16-cv-1731-MCA  
Plaintiff, :  
v. : TRANSCRIPT OF  
STATUS CONFERENCE  
CITY OF NEWARK, :  
Defendant. :  
-----x

Newark, New Jersey  
March 2, 2017

BEFORE:

THE HON. MADELINE COX ARLEO, U.S.D.J.

Reported by:  
CHARLES P. McGUIRE, C.C.R.  
Official Court Reporter

Pursuant to Section 753, Title 28, United States  
Code, the following transcript is certified to be  
an accurate record as taken stenographically in  
the above entitled proceedings.

s/CHARLES P. McGUIRE, C.C.R.

CHARLES P. McGUIRE, C.C.R.

1       **APPEARANCES:**

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3           SABRINA G. COMIZZOLI, Assistant U.S. Attorney  
4           970 Broad Street  
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6           And  
7           U. S. DEPARTMENT OF JUSTICE  
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10          BY: JEFFREY MURRAY, ESQ., and  
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18          KENYATTA STEWART, ESQ.  
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20       **ALSO PRESENT:**

21           PATTERSON BELKNAP WEBB & TYLER LLP  
22           1133 Sixth Avenue  
23           New York, New York 10036  
24           BY: PETER C. HARVEY, ESQ.  
25           Acting as Independent Monitor

          JACK KELLY, Business Administrator  
          City of Newark

          MICHAEL BRAMHALL, Director of Training  
          City of Newark, Police Division

1 THE COURT CLERK: All rise.

2 THE COURT: Come on up, everybody.

3 Okay. Hello, everyone. Thank you for your  
4 presence here today.

5 Let's begin with appearances.

6 I see a great monitor. He can start the  
7 proceeding.

8 MR. HARVEY: Sure.

9 Peter Harvey, Patterson Belknap Webb & Tyler, here  
10 as the independent monitor.

11 THE COURT: Okay.

12 MR. SANDERS: Your Honor, Corey Sanders for the  
13 United States.

14 THE COURT: Okay.

15 MR. MURRAY: Your Honor, Jeffrey Murray for the  
16 United States.

17 THE COURT: Okay.

18 MS. COMIZZOLI: Sabrina Comizzoli with the  
19 United States.

20 THE COURT: Okay.

21 MS. VASALLO: Kristin Vassallo for the United  
22 States.

23 MS. BENJAMIN: Good afternoon, Your Honor.

24 Avion Benjamin, First Assistant Corporation  
25 Counsel, for the City of Newark.

1 THE COURT: From the great City of Newark.

2 MR. STEWART: And good afternoon, Your Honor.

3 Kenyatta Stewart, Corporation Counsel, acting on  
4 behalf of the City of Newark today.

5 THE COURT: Okay. Mr. Stewart, welcome. I think  
6 we have met on other cases.

7 MR. STEWART: We have, Judge. I think so.

8 THE COURT: Okay, good.

9 Who else do we have here?

10 MR. KELLY: Jack Kelly, City Administrator, Your  
11 Honor, for the taxpayers.

12 THE COURT: That's a lot of work, being the City  
13 Administrator for Newark.

14 MR. KELLY: It is.

15 THE COURT: Are you a business administrator, too?

16 MR. BRAMHALL: Your Honor, Michael Bramhall,  
17 representing the Newark Police Division.

18 THE COURT: Okay. Excellent.

19 So, do we have everybody?

20 MR. HARVEY: Yes, that's everyone, Judge.

21 THE COURT: Okay. So why don't we begin?

22 I received a couple of submissions from the City  
23 of Newark, I got one from Mr. Harvey, and I know we have  
24 some issues to discuss.

25 Why don't we begin with Mr. Harvey, and he can

1       raise issues and we can talk about them.

2               MR. HARVEY:   Sure, Judge.

3               The first issue is the first-year monitoring plan.

4               The parties have been working very hard.   We have  
5       prepared a first-year monitoring plan.   Everyone has  
6       reviewed the consent decree requirements and the deadlines.

7               Part of the conversation that took place was  
8       between our monitoring team subject-matter experts along  
9       with the Department of Justice and Newark Police Division  
10      personnel, and we tried to figure out a plan that would be  
11      workable, that would be productive, that would be  
12      substantive, and that would set realistic timelines.

13              Beginning in October 2016, the parties met on  
14      multiple occasions to discuss the plan and review the plan,  
15      and we submitted the plan to the Court on February 17th,  
16      2017.

17              THE COURT:   I got it.

18              MR. HARVEY:   We know that the Court has reviewed  
19      it, and it is ready to be adopted if the Court deems it to  
20      be acceptable.

21              THE COURT:   Would anyone like to add anything?

22              I mean, I have the plan here.   I'm looking at  
23      paragraph 176, and 176 just provides that with 90 days as  
24      the operational date, the monitor will develop a monitoring  
25      plan, including proposed deadlines for conducting the above

1 assessments, compliance reviews and audits, and then it  
2 delineates four things that the monitoring plan must  
3 contain.

4 So as I see it, I don't think it needs to be  
5 endorsed by the Court or so ordered. It's a plan that is  
6 submitted to the Court unopposed.

7 Is that fair to say: It's unopposed?

8 MS. BENJAMIN: Yes, Your Honor.

9 THE COURT: Okay.

10 MR. HARVEY: We can give you some highlights about  
11 the monitoring plan, just for the Court's review.

12 THE COURT: Okay.

13 MR. HARVEY: What we are going to focus on in this  
14 first year, and we've made it clear to the public as well as  
15 to the Newark police, is either a rewrite or in the first  
16 instance a writing of policies, particularly with respect to  
17 use of force, internal affairs, stop detention arrests, and  
18 policies of that nature. And so we have been working along  
19 with Newark to help them think through the policies.

20 Some time ago, with Mr. Bramhall's leadership --  
21 it was a two-step process. Kathy O'Toole, the terrific  
22 chief in the City of Seattle, came to speak at Princeton,  
23 and she allocated about five hours to come and sit with  
24 Director Ambrose and Mr. Bramhall.

25 Mr. Bramhall, as you will recall, is the director

1 of training, hired specifically to train officers and to  
2 develop training.

3 And Chief O'Toole shed a lot of ideas and then  
4 invited the Newark police to come out and visit with her  
5 team that's implementing their consent decree and others.  
6 They went out there in the beginning of the year. Not only  
7 did they learn a lot from the team, but the team gave Newark  
8 materials to bring back to use as a model and kind of a  
9 sounding board as Newark is undertaking the task of  
10 rewriting its own policies and rewriting its training.

11 So we're going to focus on policies in this first  
12 year. We're also going to focus on writing the training  
13 that will accompany these policies. What we're hoping to do  
14 is, in some areas, we may be able to begin training in the  
15 first year on new policies, but as you know, the process for  
16 policy revision requires that you write the policy in draft  
17 form, the Department of Justice has to review it and approve  
18 it, the monitoring team has to review it and approve it, and  
19 then the community gets to review it and offer the community  
20 suggestions about the plan. So it is somewhat of a detailed  
21 process.

22 All of the members of the Police Division have  
23 been trained on consent decree requirements, and that is  
24 good. We've made substantial progress with respect to the  
25 property room and the handling of evidence.

1           There are some structural difficulties with that  
2           property room. For example, it's very old; there are floors  
3           of it that are condemned. Really, a new facility is needed,  
4           but Newark doesn't necessarily have the money. I'm going to  
5           see what I can do to help with state government to see if  
6           there can be some supplemental appropriations to help Newark  
7           out. But in the meantime, Newark has done some very, very  
8           positive things around that property room, for example,  
9           cutting the foliage around the building. Some people were  
10          hiding in the bushes and trying to break into the property  
11          room at night. They are also in the process of establishing  
12          new surveillance cameras and restructuring the new  
13          surveillance protocols.

14                 They're also training their officers who work  
15          there on the use of cataloging evidence using a system  
16          called the BEAST. It's the same system used by the Essex  
17          County Prosecutor's Office. It's a computerized tracking  
18          system.

19                 So there's a lot of good progress to report that  
20          will be reflected.

21                 THE COURT: Let me ask a question about the last  
22          part of the monitoring plan, which is communicating with the  
23          public.

24                 MR. HARVEY: Yes.

25                 THE COURT: I know that the plan refers to a



1 hotline with prompts --

2 MR. HARVEY: Yes.

3 THE COURT: -- and then quarterly meetings with  
4 community members.

5 MR. HARVEY: Yes.

6 THE COURT: Anything to report on that in terms of  
7 community feedback?

8 MR. HARVEY: We have not gotten official feedback  
9 yet from the community. We have opened a number of portals  
10 to receive that feedback. But we are scheduling meetings  
11 with the community where I am going to be at a number of  
12 these meetings.

13 THE COURT: Have you had one yet? Are they coming  
14 up?

15 MR. HARVEY: Well, we've had meetings to talk  
16 about the consent decree.

17 THE COURT: Right.

18 MR. HARVEY: And we've had at least two public  
19 meetings to talk about the consent decree. We had one on  
20 March 28th, but the March 28th meeting is really to discuss  
21 the monitor's quarterly report, which will be widely  
22 disseminated before that time.

23 We're also hoping that we can have various  
24 civilian organizations review the monitoring plan and give  
25 us some feedback. So we're going to send out the plan to a

1       number of organizations, some of which comprise the Civilian  
2       Complaint Review Board group, some of which don't, and  
3       invite them to give us their feedback.

4               THE COURT:   Excellent.

5               MR. HARVEY:   So that's what our plan is.

6               THE COURT:   Okay.   So, anything else to add?

7               MR. HARVEY:   Well, on the monitoring plan, no.

8               I suppose we can move on to the next topic, which  
9       is the first quarterly report.

10              THE COURT:   Okay.

11              MR. HARVEY:   And with respect to that report, we  
12       have a draft.   We're going to edit it.   We're going to  
13       circulate it to the parties next week.

14              THE COURT:   Okay.   Great.

15              MR. HARVEY:   And as I mentioned before, on March  
16       28th, we are going to have a community forum at La Casa de  
17       Pedro at 6:30 here in Newark, and we're going to really  
18       issue the report to a number of different organizations and  
19       leaders and get their feedback and get their comments.

20              So that's pretty much what we have to share with  
21       respect to the first quarterly report.

22              Ordinarily, Judge, the way a quarterly report  
23       works -- we actually struggled with this, the idea of when  
24       to do the first one.   Ordinarily, what you would want is the  
25       monitoring plan adopted, and then give Newark 90 days under

1 the monitoring plan, and then measure their progress. Jeff  
2 Murray of the Department of Justice raised a very, very good  
3 point, and that is, you don't really want to issue your  
4 first quarterly monitoring report a year into the consent  
5 decree, so why not do kind of an initial monitoring report  
6 -- and I think he's right about that -- an initial  
7 monitoring report, because there have been some  
8 accomplishments --

9 THE COURT: That's right.

10 MR. HARVEY: -- and there is some progress, and  
11 the public needs to know about that work, and so that's why  
12 we're going to issue this report this month.

13 THE COURT: And remind me how it will get  
14 distributed to others beyond the team in the courtroom.  
15 From the web site?

16 MR. HARVEY: It will be put on the Newark police  
17 web site, the City web site, we will put it on our web site,  
18 and we're going to mail it out affirmatively to groups. For  
19 example, I've contacted, to give you an example, the Urban  
20 League of Essex County to ask the president to be ready to  
21 get the report and to give us some feedback, be ready to get  
22 the monitoring plan and give us some feedback. And so we're  
23 going to affirmatively mail it out to people because we want  
24 it in wide release, to use a film term, so that we get as  
25 much feedback as we can from as many constituencies as we

1       can.

2               THE COURT:   Okay.

3               MR. HARVEY:   The next topic, Judge, is the  
4       implementation of the civilian oversight entity as set forth  
5       in paragraph 13.

6               THE COURT:   I take it that will be addressed in  
7       the March 1 letter I received from the City of Newark.

8               MR. HARVEY:   Yes, and the City can comment upon  
9       it.

10              We just want to raise for the Court, Judge Kessler  
11       issued an order dated January 23rd, 2017 to amend the  
12       preliminary injunction that was issued on November 2nd,  
13       2016.   There is a provision in that order that I suspect  
14       will have to be amended, it probably would be wise to amend  
15       it, and the provision essentially provides that while the  
16       CCRB can review and evaluate policies and make  
17       recommendations to the City, it cannot share those  
18       recommendations with the Federal monitor, it can only share  
19       it with, I suppose, the parties to the lawsuit.   I mean, as  
20       a practical matter, I suppose the CCRB could give it to the  
21       City of Newark, including the Police Division, and they  
22       could send it to the monitor as a workaround, but it may  
23       make sense for someone to raise this issue with  
24       Judge Kessler and let Judge Kessler know that that language  
25       in the order could be read to conflict with paragraph 13 or

1 at least the spirit of the consent decree.

2 THE COURT: Right.

3 So let me ask the City of Newark: When do you  
4 expect to be before Judge Kessler again?

5 MS. BENJAMIN: The next scheduled conference is in  
6 May, May 8th.

7 THE COURT: Okay. Would it be possible to write  
8 to Judge Kessler and ask for the order to be modified at the  
9 suggestion of me, that, give him a copy of this consent  
10 decree and ask if he would amend the order to allow sharing  
11 of the findings of the oversight board?

12 They're not making any findings yet, though;  
13 correct?

14 MS. BENJAMIN: They're not, and Judge Kessler does  
15 have a copy of the consent decree specifically with what the  
16 civilian oversight entity is supposed to do, which is why in  
17 amending the order he said it's okay for them to review the  
18 policies and procedures. His position was, once they start  
19 doing that, if they are going to be making written  
20 recommendations, for me to come back before him, he wanted  
21 more concrete stuff in front of him before deciding that  
22 they can go ahead and start making those recommendations,  
23 which is why I said --

24 THE COURT: Okay, because I'm looking at paragraph  
25 1B of his order. It says: "The Civilian Complaint Review

1 Board is permitted to engage in the process of reviewing  
2 Newark policies and procedures and developing  
3 recommendations to set policies and procedures, but will not  
4 submit those recommendations to the Federal monitor or to  
5 any other outside party without further order of the Court."

6 If you read paragraph 13, it puts the burden on  
7 the City. Paragraph 13 is completely on the City, and it  
8 doesn't have to be this civilian board, it just says a  
9 civilian oversight entity. Right?

10 MS. BENJAMIN: Right.

11 THE COURT: So, you know, the answer could be,  
12 this is not -- you know, the City could decide whatever it  
13 wants to decide; it's up to the City. But it says that "The  
14 duties shall be including the review of internal  
15 investigations and procedures for resolution of civilian  
16 complaints, monitoring trends in the complaint, findings of  
17 misconduct, and imposition of discipline. The monitor shall  
18 evaluate and report on the City's implementation and  
19 maintenance of the civilian oversight entity to determine if  
20 it is helping to achieve the goals of the agreement."

21 So it seems to me until we begin implementing the  
22 plan, we can't have the -- the purpose of the oversight  
23 board is to make sure that they're implementing the plan.  
24 If nothing has been changed yet -- we have deadlines, but  
25 nothing has been implemented yet, so there's nothing for

1       them to report. What we want to make sure is this oversight  
2       board is going to report to the monitor and say, we've  
3       reviewed the procedures, for example, resolution of civilian  
4       complaints, et cetera, stop use of force arrests, and here's  
5       our findings, and then the monitor can look at those  
6       findings and take them into account, and he decides whether  
7       or not we're meeting the goals.

8               So I guess I'm not -- you know, this is very  
9       different. The State Court order just says they can begin  
10      to review the policies and procedures and developing  
11      recommendations of said policies and procedures.

12             So some of those policies and procedures are going  
13      to change based on what the monitor is recommending; right?

14             MS. BENJAMIN: They may. But -- like, for  
15      example, we're working on the use of force general order.

16             THE COURT: Right.

17             MS. BENJAMIN: We can give that to the CCRB to  
18      review.

19             THE COURT: The new policy.

20             MS. BENJAMIN: Correct.

21             THE COURT: Okay.

22             MS. BENJAMIN: And let's say they have no  
23      comments, then there's noting to report. But if they do  
24      have feedback, at that time -- Judge Kessler in coming up  
25      with the order was like, come back before me and you will

1 get another order for them to issue it, because obviously  
2 the FOP doesn't want the CCRB to say anything, but  
3 Judge Kessler understands we have to comply with the consent  
4 decree and is willing to work with us, but he wanted for it  
5 to be more concrete information than him just saying right  
6 now, whatever they review, they can go ahead and give  
7 written recommendations for the monitor.

8 THE COURT: Okay. So this order doesn't really  
9 anticipate what if any role the monitor will have in  
10 reviewing the policies and reviewing and just having general  
11 oversight of the procedures and policies. That's really  
12 what -- in other words, our consent decree imposes upon the  
13 City to have this board that will review investigation  
14 procedures, resolution of complaints, et cetera, and then  
15 the monitor will evaluate and report on the City's  
16 implementation.

17 So when is the monitor going to have a role in  
18 looking at what the civilian complaint board is doing so it  
19 can evaluate?

20 MS. BENJAMIN: I guess that will come once the  
21 underlying case right now is decided, which I put in the  
22 correspondence that we should have an answer by May, because  
23 right now, they can't look at investigations, the things  
24 that the monitor really needs to say if they're doing, they  
25 can't do under the current injunction that we have.



1 THE COURT: Okay. So let me just -- it says 360  
2 days of the operational date.

3 Remind me what the operational date is.

4 MR. HARVEY: The operation -- I think it's July  
5 12th of 2016, Judge.

6 THE COURT: So do you want to table this and make  
7 a further report at the next meeting?

8 It may be premature. We have until July; we may  
9 be able to resolve it by March.

10 MR. HARVEY: I was going to raise that. The City  
11 still has some time, and, Judge, I think the challenge is  
12 that Judge Kessler's order -- the consent decree says in  
13 paragraph 13 that the CCRB shall make recommendations. Now,  
14 it doesn't specifically say, to the monitor; it says, shall  
15 make recommendations with respect to policies.

16 Now, what is contemplated by the ambit of that  
17 policy certainly has to be, to the monitor, to the City, and  
18 to the Department of Justice.

19 Judge Kessler's order says that while the CCRB can  
20 make recommendations, it can't, quote, "submit those  
21 recommendations to the Federal monitor or any outside party  
22 without further court order," period, end quote.

23 So he's kind of captured this area to say, well,  
24 you can make your recommendations, except you can't share  
25 them with the monitor.

1                   THE COURT: Right, and that's exactly what section  
2   13 says.

3                   MR. HARVEY: That's exactly what it contemplates,  
4   to be sure.

5                   And we're not so concerned about the other powers  
6   that were granted by the City administration, issuing  
7   subpoenas, holding hearings and the like, because those  
8   powers are not set forth in paragraph 13. So we're not so  
9   concerned about them. The City could be in compliance with  
10   paragraph 13 in our view if it conducts nothing -- if the  
11   CCRB does nothing more than conduct a review function and  
12   make recommendations. And so we just want to be sure that  
13   we all are aware that Judge Kessler's order creates some  
14   tension in that regard with respect to a really basic  
15   function of the CCRB.

16                  THE COURT: Which is review and recommend.

17                  MR. HARVEY: Yes.

18                  THE COURT: So we all know what the tension is  
19   here.

20                  MS. BENJAMIN: Right.

21                  THE COURT: And until and unless the CCRB can  
22   review and report to the monitor, you're not going to be in  
23   compliance with paragraph 13.

24                  MS. BENJAMIN: No, we understand that, and  
25   Judge Kessler understands that as well, which is why he

1       wants to resolve the underlying case sooner rather than  
2       later.

3               THE COURT: All right. So when did we agree to  
4       meet, Mr. Harvey?

5               MR. HARVEY: We do not have a new date, other than  
6       this one, but the Court obviously will set one.

7               THE COURT: Maybe in early June, three months from  
8       now?

9               MR. HARVEY: That's perfectly fine.

10              THE COURT: Will that work? All right. So pick a  
11       date for June.

12              Okay. So, anything else we need to talk about?

13              We're going to table this -- I'm sorry,  
14       Mr. Harvey.

15              MR. HARVEY: No, go right ahead.

16              THE COURT: If the City could report to me again  
17       by letter in advance of our next conference, --

18              MS. BENJAMIN: That's fine.

19              THE COURT: -- our status conference, I'll put it  
20       in the text order when I give you the date for the  
21       conference. Okay?

22              And we also have the issue of the payment to the  
23       independent monitor.

24              MR. HARVEY: Yes. It's really a replenishment of  
25       the Court Clerk's fund, and what we have done, Judge, is, we

1        have -- and when we looked at the invoices, they are taking  
2        an inordinate amount of time to be paid, and I'm not so much  
3        worried about our law firm as I am subject-matter experts,  
4        many of whom are independent contractors, as well as the  
5        Police Institute at Rutgers, because the Police Institute  
6        runs into administrative challenges with Rutgers University  
7        when their invoices are outstanding beyond a certain period  
8        of time.

9                So the challenge that we face is -- I'll give you  
10       an example. One of our subject-matter experts actually had  
11       to avail himself of a line of credit to keep his business  
12       operating while he was waiting for an invoice to be paid.  
13       And what we said is that these invoices just have to be paid  
14       sooner. So we have asked the Clerk pay us last, so just so  
15       it's very clear, we're not making a pitch for ourselves. We  
16       say pay the subject-matter experts first, pay us last; and  
17       they've done that.

18               And so, for example, our April through July time  
19       was the subject of a November 4th, 2016 order by the Court.  
20       The invoice was paid in full on December 22nd.

21               The August 2016 invoice was covered by that same  
22       December 22nd order of disbursement, and that invoice was  
23       paid February 27th, 2017.

24               September time was the subject of a February 2nd,  
25       2017 order of disbursement. That invoice has now been paid

1 in full as of February 27th.

2 THE COURT: So what's the last invoice from the  
3 firm and from the experts that hasn't been paid?

4 MR. HARVEY: Well, the last invoice that we have  
5 is that -- we have October time that has been partially  
6 paid. There's now \$16,339.78 owed to Rutgers, there's  
7 \$115,853.50 owed to us, and pretty soon, maybe in about a  
8 week, the City is going to get our invoices for our November  
9 time and our December time, and they are going to be  
10 significant.

11 So what we're asking is that these invoices just  
12 be paid a little sooner so that we just don't run into these  
13 administrative problems with and restlessness with our  
14 own --

15 THE COURT: Experts.

16 MR. HARVEY: -- experts.

17 And I'm thinking that, you know, the Court reduced  
18 the time period for payment, for replenishment --

19 THE COURT: From 30 days --

20 MR. HARVEY: -- to 30 days, and, I'm wondering,  
21 should it be reduced to now maybe 15 or 20 days?

22 THE COURT: Well, let me ask you, how many bills  
23 are outstanding that have been outstanding for over 30 days?  
24 For the law firm and to experts.

25 MR. HARVEY: Well, there were three bills that

1       were outstanding for over 30 days. Three of those bills  
2       have been paid, and now we have an October -- our October  
3       2016 time. There has been a partial payment of those  
4       invoices again from that October 2016 time.

5               \$16,339.78 is owed to Rutgers. That's the Police  
6       Institute.

7               THE COURT: And when was that bill submitted to  
8       the City?

9               MR. HARVEY: It was -- that bill was submitted  
10       before the end of the year, and it was the subject of a  
11       February 21, 2017 order of disbursement.

12              THE COURT: So that was paid?

13              MR. HARVEY: Partially paid. On February 27, it  
14       was partially paid.

15              THE COURT: So that's outstanding.

16              MR. HARVEY: That's outstanding.

17              THE COURT: That should have been paid.  
18       Mr. Kelly.

19              MR. KELLY: Your Honor.

20              THE COURT: Did you bring your checkbook?

21              MR. STEWART: I think he did.

22              THE COURT: The Courts are always happy to see the  
23       guy with the money at all conferences.

24              MR. KELLY: Aren't they.

25              There's been obviously a disconnect.

1           The City was required initially to deposit  
2       \$200,000 in the account.

3           Mr. Harvey's first bill was \$295,000, 50 percent  
4       more than what the City was required to deposit, so  
5       immediately, there's been a disconnect.

6           The total amount agreed upon from how I read the  
7       order is \$7.4 million over a four-year period -- five-year  
8       period, I'm sorry, and that averages \$1,480,000 a year.

9           At the current burn rate, Mr. Harvey may be  
10      spending \$2.7 million this year.

11          So I think what would be appropriate is if  
12      Mr. Harvey decided on what the number should be for the  
13      City to appropriate, because we have to have a legal  
14      appropriation in which to make payment. Although the  
15      City's budget may be three-quarters of a billion dollars,  
16      unless I have legally appropriated funds, I can't just issue  
17      the Court a check; I have to have a legal appropriation.

18          So, initially, in the 2016 budget, \$200,000 was  
19      appropriated as we read the order. Again, the first invoice  
20      came in at 50 percent higher than that, at \$295,000.

21          Late in the year, when the City is legally able to  
22      transfer funds between major accounts, a transfer was made,  
23      an additional \$200,000 was set aside.

24          So the first check was paid over to the Court on  
25      July 19th, 2016, the second check for \$200,000 on December

1       20th, 2016, and then with the City's temporary budget,  
2       because the way the legal process works is, we put together  
3       a temporary budget for January 1st. There was \$500,000 that  
4       was budgeted for this purpose. Unfortunately, that check  
5       wasn't cut over to the Court until February 23rd.

6               So there's been \$900,000 against \$1,033,000 worth  
7       of invoices.

8               Before City Council at the next meeting, there is  
9       going to be an additional appropriation of \$2 million.

10              So this year, the City will have budgeted  
11       \$2.5 million, which will cost property owners in excess of  
12       one percent increase on every property owner's tax bill.

13              What I'd like to do is get from Mr. Harvey what he  
14       believes his firm and his experts will be billing the City  
15       to make sure the appropriation that will be set aside,  
16       2.5 million this year, will be adequate.

17              THE COURT: A little reaction.

18              It's always good to communicate, because my sense,  
19       without giving Mr. Harvey the opportunity to explain, is  
20       that, in the beginning, it's going to be labor-intensive.  
21       You have to pay for the experts; they want their money up  
22       front, they're going to do most of their work up front, and  
23       as the years go on, I would assume that the fees will  
24       decrease, not increase. It will teeter off and decrease,  
25       because in the beginning is when you're going to be doing



1 all the implementation, all the studying, when it's all new  
2 to everyone, when the policies are being implemented, the  
3 most training is at the beginning for the police officers,  
4 and that's labor-intensive for the monitor and his team.

5 So, you know, just so you know, and I'll let  
6 Mr. Harvey explain it, but my sense, having overseen this  
7 agreement and its implementation, my sense was, the reason  
8 why there was no four-year even breakdown was because that's  
9 not how they envisioned it going forward. What they  
10 envisioned it was, the work becomes less over time.

11 So I think having 2.5 million -- for the next  
12 12-month period, would that be?

13 MR. KELLY: The current, 2017 period, 2.5 million.

14 THE COURT: I think that's an excellent number. I  
15 can't imagine it will exceed that.

16 MR. KELLY: At the current burn rate, it will.

17 THE COURT: Right, but listen to what I said.  
18 Everyone knows what the budget is in this case, but the  
19 expectation is that it's not going to be an even burn rate.  
20 It's going to be a top-heavy burn rate because the bulk of  
21 the work that's going to be done to implement this  
22 monitoring plan is going to happen up front, and that  
23 includes training -- a huge amount of it is going to be  
24 training -- revising, and policies, the first-year -- the  
25 first real implementation plan is where the bulk of the work

1 is going to be.

2 So my expectation is not -- I want to disavow you  
3 of any notion that this is going to be even over four years.  
4 I want you to understand that it's going to be top-heavy in  
5 the beginning and then it should teeter off as we go  
6 forward, and that's why maybe that wasn't clarified early  
7 on.

8 And I completely respect and understand the City  
9 is trying to be fiscally responsible. Nothing drives tax  
10 people or financial people crazier than lawyers who have  
11 unexpected expenses. It's like the churches that hate it  
12 when it snows a lot because they have a snowplow bill that  
13 throws off the budget, right? It's the same thing. And I  
14 know it's throwing off your budget. So what I want to do  
15 here is manage this to everybody's expectation.

16 So, Mr. Harvey, what do you think?

17 MR. HARVEY: Judge, I think you have said it as  
18 well as it can be said. The first two years of a monitoring  
19 plan -- and the Department of Justice knows this; most  
20 cities that have done it know this -- are labor-intensive,  
21 the reason being is, a number of policies have to be  
22 rewritten. Some don't exist.

23 I'll give you an example: Community engagement.  
24 Newark has no such policy. It has to be written brand new,  
25 as does the training manual has to be written brand new.

1 THE COURT: As does the training.

2 MR. HARVEY: Yes. And then you have to actually  
3 conduct the training, which means it has to be observed.

4 As the process goes on and Newark is found to be  
5 in compliance for two consecutive monitoring periods, it is  
6 not monitored on that task going forward, so what happens  
7 is, actually, the duties of the team shrink because, as  
8 Newark comes into compliance, you're monitoring less issues.  
9 But in the beginning, you have to cover the entire  
10 agreement, and that entire agreement requires policy  
11 rewrites, it requires community engagement and  
12 conversations, and it requires training writes and rewrites  
13 in many instances. As you get into years -- at the end of  
14 year two, as you get into years three, four, and five, it's  
15 really just observing how the City is implementing the  
16 policies that it has written and adopted and the training  
17 its officers have undergone. And so you are checking it in  
18 a very different way, and so the expense is a lot less.

19 And remember something: I'm talking to those who  
20 are familiar with these kinds of processes. Part of why we  
21 are here is because these kind of investments were never  
22 made with the police department in the past. I view it as,  
23 you take a 10-story building that you neglect for 25 years,  
24 and then finally you get sued and a court orders you to fix  
25 it, and you have to go floor by floor, apartment by

1 apartment, and you have to fix it. And, yes, it's  
2 expensive; but it's expensive all at once because you have  
3 neglected the property for 25 years.

4 And so that's part of what we are experiencing.  
5 But I think, Judge, you have captured what is the challenge,  
6 and the challenge is really in the first two years, and it  
7 will not be an even burn rate of money.

8 THE COURT: So the 2.5, do you have a sense that  
9 will be sufficient?

10 MR. HARVEY: I think it would be sufficient for  
11 this year, and I think the 2.5 allocation would be helpful.

12 THE COURT: I do, too. And I appreciate the  
13 willingness of the City to engage and to make such a fair --  
14 I think that's a very fair estimate. And hopefully in  
15 subsequent years we will have less of a need to allocate  
16 money. Okay?

17 So you're going to take the message back with the  
18 2.5?

19 MR. KELLY: I'm sorry, Judge?

20 THE COURT: The message you're going to take back  
21 is to allocate 2.5?

22 MR. KELLY: Well, again, 500,000 was already  
23 appropriated, and that check has been paid over. \$2 million  
24 is before City Council at their next meeting next week. The  
25 7th, there's a meeting of March 7th, and again, there's --

1       it requires a legal appropriation, and there is a resolution  
2       before them to increase this funding item by \$2 million.

3               THE COURT:   Okay, and if there's any problem with  
4       that, if the City can let me know, that would be  
5       appreciated.   Okay?

6               Thank you.

7               MR. HARVEY:   I think that's all we have, Judge,  
8       today.

9               THE COURT:   Does the City of Newark have any  
10       issues?

11              MS. BENJAMIN:   We're good.

12              THE COURT:   They're issue-less?   That's good.

13              (Laughter)

14              THE COURT:   Anyone from Justice want to jump in?

15              MR. MURRAY:   We have nothing to add, Your Honor.

16              THE COURT:   Excellent.   Well, thank you for coming  
17       today, guys.   Did you come up from Washington?

18              MR. SANDERS:   Yes, Your Honor.

19              THE COURT:   Okay, good.   So what time is your  
20       train?

21              (Laughter)

22              MR. MURRAY:   Four minutes ago.

23              (Laughter)

24              THE COURT:   They run all the time.   They run all  
25       the time.

1 MR. MURRAY: There's another one in 25 minutes.

2 THE COURT: The City of Newark guys will drop you  
3 off, I'm sure.

4 (Laughter)

5 MS. COMIZZOLI: Your Honor, are you going to give  
6 us a new date?

7 THE COURT: Yes.

8 June 8th at 2 p.m.?

9 MR. HARVEY: Judge, hold on?

10 THE COURT: We can move it.

11 MR. HARVEY: Well, I would just do it earlier,  
12 earlier in June, if at all possible.

13 THE COURT: How about June 1st?

14 MR. HARVEY: June 1st is fine.

15 THE COURT: Okay.

16 THE COURT CLERK: Two o'clock.

17 THE COURT: Two o'clock? Does that work for the  
18 Washington people?

19 MR. SANDERS: Yes, it does, Your Honor.

20 THE COURT: Good.

21 MR. STEWART: And it works for the City, too,  
22 Judge.

23 (Off the record discussion)

24 THE COURT: All right, guys. Thank you for  
25 coming. Safe travels. I'll see you -- we'll do a text

1       order, and if you can get me any status letters in advance  
2       of the conference, it would be appreciated.

3               Thank you.

4               THE COURT CLERK: All rise.

5               (Matter concluded)

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